

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DANIEL KLEEBERG, LISA STEIN,
and AUDREY HAYS,

Plaintiffs,

v.

LESTER EBER; ALEXBAY, LLC f/k/a
LESTER EBER, LLC;
CANANDAIGUA NATIONAL
CORPORATION d/b/a
CANANDAIGUA NATIONAL BANK
& TRUST; ELLIOT W. GUMAER,
JR.; EBER BROS. & CO., INC.; EBER
BROS. WINE AND LIQUOR
CORPORATION; EBER BROS. WINE
& LIQUOR METRO, INC.; EBER-
CONNECTICUT, LLC; and WENDY
EBER,

Defendants.

Civil Action No. 16-CV-9517(LAK)

JOINT DISCOVERY PLAN

Pursuant to Fed. R. Civ. P. 26(f), attorneys for Plaintiffs Daniel Kleeberg, Lisa Stein, and Audrey Hays (“Plaintiffs”) and Defendants Lester Eber; Alex Bay, LLC f/k/a Lester Eber, LLC; Canandaigua National Corporation d/b/a Canandaigua National Bank & Trust (“CNB”); Elliot W. Gumaer, Jr.; Eber Bros. & Co., Inc.; Eber Bros. Wine and Liquor Corporation; Eber Bros. Wine & Liquor Metro, Inc.; Eber-Connecticut, LLC; and Wendy Eber (collectively, “Defendants”) met and conferred by telephone on May 22, 2017. All parties except for CNB, which has indicated it needs more time to comment on this document, now submit the following Joint Discovery Plan.

Proposed Discovery Plan¹

- A. The parties seek no modifications to the mandatory disclosures required by Rule 26(a), except that the initial disclosures shall be served by each party on or before June 16, 2017.
- B. The scope of discovery will include hardcopy and electronic documents and communications, depositions of the parties, possible third-party discovery, and expert testimony on the issue of valuation. At a minimum, the parties agree that discovery will include discovery regarding the Trust's management of its operating assets as per applicable law; the allegedly self-dealing transactions; and the necessity and extent of disclosure of the transactions to the Trust beneficiaries. The parties believe that pretrial discovery should close on December 12, 2017; Plaintiffs' expert report(s) should be due December 12, 2017; Defendants' expert report(s), if any should be due February 12, 2018; and dispositive motion(s) and/or requests to charge should be due February 12, 2018.
 - a. This time period is longer than that provided by the Court based on the parties' belief that the issues in this case are complex and should be generally separated so that the expensive process of valuing the company assets comes later in the discovery period. In addition, Plaintiffs' counsel and certain Defendants' counsel have other matters scheduled shortly before November 12, 2017 that are likely to make completing discovery in that period quite difficult.
- C. The parties have agreed to exchange information about their document collection and review processes, including their document searches' time frames, search terms,

¹ Defendants CNB and Elliott W. Gumaer have pending motions to dismiss.

and any other significant search parameters. The parties intend to exchange this information early in the process to avoid having to repeat collection and sorting efforts.

- D. The parties agree that it will be necessary for the Court to issue a protective order pursuant to Fed. R. Civ. P. 26(c) restricting the permissible uses of discovery to protect confidential and privileged information.
- E. The parties do not believe any changes should be made to the limitations on discovery imposed under Federal and Local Civil Rules.
- F. The parties have not identified any other orders that the Court should issue under Rule 26(c), 16(b), or 16(c).

Dated: New York, New York
June 6, 2016

/s Brian C. Brook
Brian C. Brook (BB 1980)
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